



November 4, 2022

**RECEIVED**  
November 4, 2022  
**Commission on  
State Mandates**

Heather Halsey  
Executive Director  
Commission on State Mandates  
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**Response to Draft Proposed Decision for Test Claim 09-TC-03, California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and, XVIII**

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the draft proposed decision for the California Regional Water Quality Control Board, Santa Ana Region, Test Claim 09-TC-03. Finance defers to the State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board on the question of whether the test claim permit imposes state mandated new programs or higher levels of service. Following our 2011 and 2016 comments, Finance now comments again on the issue of claimants' fee authority.

Finance agrees with the conclusion of the draft proposed decision that there is insufficient evidence that claimants were forced to spend their proceeds of taxes within the meaning of Article XIII B, Section 6 and Government Code section 17514, and that the test claim should be denied because there are no costs mandated by the state. However, Finance disagrees with the analysis in the draft proposed decision regarding *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4<sup>th</sup> 1351, and the application of SB 231 in concluding that prior to January 1, 2018, claimants lacked fee authority due to the voter approval requirement of Proposition 218.

As in our prior comments, Finance continues to assert that claimants do have fee authority undiminished by Proposition 218 or 26. Claimants have authority to impose fees whether or not it is politically feasible to impose them and whether or not the voter approval requirements under Proposition 218 apply.

As the draft proposed decision correctly finds, under SB 231 storm sewer or storm drainage fees imposed on property owners are not subject to the voter approval requirement at all. However, because SB 231 was a clear overruling of the wrongly-decided *City of Salinas* case, the Commission should also find that from the beginning of the potential period of reimbursement the voter approval requirement did not apply to claimants and therefore did not impede their fee authority.

The draft proposed decision concludes that to the extent fees requiring voter approval were the only fees available prior to the enactment of SB 231, and claimants were unable to pass the fees during that time due to the voter approval requirement, the fee authority is not sufficient as a matter of law. Finance asserts that regardless of whether the voter approval requirement of Proposition 218 applies, claimants had sufficient fee authority under the reasoning of *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, which found that the majority protest procedure does not negate a claimant's fee authority.

As the draft decision notes on page 187, claimants "do not wish to impose new fees, nor establish that such fees do not constitute a tax; instead they seek mandate reimbursement." Claimants may choose not to put a fee to the voters or the voters may reject a fee, but not at the state's expense.

If you have any questions regarding this letter, please contact Donna Ferebee, Attorney IV, at (916) 445-3274.

Sincerely,



KARI KROGSENG  
Chief Counsel

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On November 7, 2022, I served the:

- **Cities of Alameda’s and Union City’s and Alameda Countywide Clean Water Program’s Comments on the Draft Proposed Decision filed November 4, 2022**
- **Claimants’ Comments on the Draft Proposed Decision filed November 4, 2022**
- **Finance’s Comments on the Draft Proposed Decision filed November 4, 2022**
- **Water Boards’ Comments on the Draft Proposed Decision filed November 4, 2022**

*California Regional Water Quality Control Board, Santa Ana Region,  
Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and, XVIII, 09-TC-03  
Santa Ana Regional Water Quality Control Board, Resolution No. R8-2009-0030,  
adopted May 22, 2009*

County of Orange, Orange County Flood Control District; and the Cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park, Claimants

By making it available on the Commission’s website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 7, 2022 at Sacramento, California.



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**Matter:** California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

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City of Buena Park  
City of Costa Mesa  
City of Cypress  
City of Fountain Valley  
City of Fullerton  
City of Huntington Beach  
City of Irvine  
City of Lake Forest  
City of Newport Beach  
City of Placentia  
City of Seal Beach  
City of Villa Park  
County of Orange  
Orange County Flood Control District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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